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E. Spinks

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5 Attorney for Plaintiff
 6 REV. WILL HARDEMAN *Johnathan Spinks*
 7 *ASG*

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

ADR

10 JOHNATHAN SPINKS,

11 Case No. **C08-02404**

TEH

12 Plaintiff,

13 COMPLAINT FOR DAMAGES,
 14 DECLARATORY AND INJUNCTIVE
 RELIEF, FOR VIOLATIONS OF THE
 AMERICANS WITH DISABILITIES ACT,
 ERISA, FMLA, FEHA, CALIFORNIA
 LABOR CODE, WRONGFUL DISCHARGE

v.
 13 FEDEX NATIONAL LTL,

14 Defendant.

15 JURY TRIAL DEMANDED

16

17 Plaintiff Johnathan Spinks alleges as follows:

18
PARTIES

19
 20 1. Plaintiff Johnathan Spinks (hereafter "Spinks") is a 25-year-old male who resides
 21 in San Leandro, California, in the Northern District.

22
 23 2. Defendant FEDEX National LTL "(FEDEX)" is a commercial freight pickup
 and delivery company located and doing business in San Leandro, California, in the Northern
 24 District. At all times herein mentioned, FEDEX had in effect a benefits plan which included
 25 vacation, sick, personal and family and disability benefits.

26
JURISDICTION AND VENUE

27
 28 3. The Court has jurisdiction over this matter under the Americans With Disabilities

1 Act ("ADA"), 42 U.S.C. section 12101 et seq., and 29 C.F.R., Part 1630 et seq; the Employee
2 Retirement and Income Security Act ("ERISA"), 29 USC section 1001 et seq.; the Family and
3 Medical Leave Act of 1993 ("FMLA"), 29 USC 2654, 29 CFR Part 825.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 4. Spinks worked for FEDEX's predecessor, Watkins Associated Industries, Inc.
6 ("Watkins") as a non-union Dock worker from approximately June 13, 2005, to June 1, 2006.
7 Spinks' duties were essentially unloading freight off of out-bound and in-bound FEDEX trucks
8 by hand and with a forklift.

9 5. Spinks worked approximately 32 hours per week for Watkins and was an hourly
10 employee. He performed his work satisfactorily and received pay increases from \$13.00 per
11 hour to \$15.00 per hour. Watkins offered and Spinks received medical, sick, vacation, dental
12 and disability leave benefits.

13 6. While working for Watkins, Spinks' superiors made sure that he received a ten
14 minute break in the morning, a 30-minute lunch, and a ten-minute break in the afternoon.

15 7. On or about June 1, 2006, FEDEX bought out Watkins, and retained Spinks as a
16 non-union employee. FEDEX offered and Spinks received medical, sick, vacation, personal and
17 family leave, dental and disability leave benefits.

18 8. Work conditions changed under FEDEX. Plaintiff's hourly rate was reduced from
19 \$15.00 per hour to approximately \$14.85 per hour. Corresponding with a reduction in Spinks'
20 pay was an increase in his workload. Plaintiff's supervisors required him to frequently work 14-
21 hour days, without breaks or lunch periods.

22 9. The increased workload resulted from an increase in truck driver's work. Many of
23 the truck drivers with Commercial Class C licenses previously working for Watkins quit when
24 FEDEX reduced their hourly pay and refused to pay them anything close to union scale. Instead
25 of replacing the truck drivers with qualified drivers with Class C commercial licenses, FEDEX
26 obtained contracted labor with Class B licenses. The contract workers refused to load their
27 trucks like the regular truck drivers, and their trucks were too small to handle the freight loads.

1 Consequently FEDEX used Dock Workers, including Spinks, to work out of class and perform
2 the job duties and responsibilities previously performed by truck drivers. Under FEDEX, Spinks'
3 superiors frequently required him to work 14-hour days, performing out-of-class work, many
4 times with no lunch or other breaks.

5 10. A supervisor named Mago demanded long hours of Spinks, without
6 commensurate compensation or the breaks required by law. Mago's superior was the Dock
7 Supervisor, Cleo Jackson.

8 10. Because FEDEX was working Spinks so many hours without the required breaks,
9 he frequently became fatigued on the job, and was concerned about safety issues. Beginning in
10 about August, 2006, Spinks complained to his immediate supervisor, Mago, about having to
11 work the long hours without breaks. In retaliation against Spinks, Mago assigned him to paint
12 and clean up the facility, which was not part of Spinks duties and responsibilities, in addition to
13 performing the work of the truck drivers.

14 11. On one occasion on or about August, 2006, Spinks had worked about 14 hours,
15 and told Mago that he wanted to leave because he was tired. Mago got extremely angry and
16 retorted "You leave when I tell you to leave. When I ask you to do something, say 'Sir.'" In
17 light of Mago's response, Spinks had no choice but to continue to work more than 14 hours.
18 Spinks complained to Cleo Jackson about having to work long hours without breaks, and Mago's
19 attitude, without result. These working conditions continued up until October, 2006.

20 12. On or about October 29, 2006, after Spinks commented to Jackson and Mago
21 about the long hours without breaks, Jackson told Spinks he was suspended and ordered him to
22 to clock out and leave. Spinks asserts that he was told to leave in retaliation for commenting on
23 the work conditions. Spinks never received anything in writing concerning why he was
24 suspended.

25 13. From October 29, 2006, to November 11, 2006, Spinks called Mago and Jackson
26 every single work day, inquiring about when he would be called back to work, or when he might
27 have a hearing on his suspension. He received no response from either Jackson or Mago.

14. On November 11, 2006, Spinks was involved in a very serious motorcycle accident which broke his hip, and resulted in a permanent condition affecting one of his hips and legs. The condition affects his mobility, but he is able to work with some accommodation.

15. On very next day after this accident, Spinks' mother, Lorene Davis, notified FEDEX that Spinks was hospitalized, and requested information concerning sick, personal, family or disability leaves to which Spinks was entitled. Receiving no response from the regional office, on November 19, 2006, Ms. Davis sent an e-mail to Tosha Owens in the National FEDEX office, requesting on Spinks' behalf, sick, personal or vacation time or family leave for him, and notifying FEDEX that she completed the disability claim paperwork. She received no response from FEDEX. MSW Sharmila Grant at Highland Hospital also sent a letter to the attention of Cleo Jackson at FEDEX, notifying him of Spinks' hospitalization, and inviting him to contact her. Neither Jackson nor anyone at FEDEX ever contacted Ms. Grant.

16. On November 21, 2006, Jay Gallagher, the new terminal Manager for FEDEX called Spinks and told him that he was terminated effective November 21, 2006, for not showing up for work on October 30, 2006. This was false, as Spinks had repeatedly called in on October 30, 2006, asking Mago and Jackson when he was to report to work. Spinks asserts that he was fired in retaliation for complaining about FEDEX's violation of labor laws, and so that FEDEX could avoid having to accommodate Spink's disability, and so that FEDEX would not have to give Spinks the benefits to which he was entitled under ERISA.

17. On November 28, 2006, Spinks sent a certified letter to Jay Gallagher, asking him to state in writing why Spinks was terminated from his employment. Spinks received no response to his letter.

17. Spinks has suffered loss of wages and the value of benefits, financial hardship, severe and extreme emotional distress as a result of FEDEX' actions.

FIRST CAUSE OF ACTION
VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT,
and the FAIR EMPLOYMENT AND HOUSING ACT

18. Spinks incorporates by reference as though fully set forth the allegations of

paragraphs 1-17.

19. Spinks is an individual with a physical disability which limits one or more major life activities, or is regarded as having an impairment which affects his walking, running, and moving.

20. Spinks is a qualified employee with a disability who, with or without reasonable accommodation, can perform the essential functions of the job in question if the existing facilities are made readily accessible to and usable by him, through job restructuring, modifying work schedules, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying policies. This accommodation would not create an undue hardship for FEDEX.

21. FEDEX denied Spinks reasonable accommodation, and retaliated against Spinks by depriving him of the opportunity to request reasonable accommodation in violation of the ADA and FEHA, causing damages to Spinks.

SECOND FEDERAL CAUSE OF ACTION

VIOLATION OF ERISA

22. Spinks incorporates by reference as though fully set forth the allegations of paragraphs 1-17.

23. In engaging the conduct alleged in this complaint, FEDEX violated the provisions of ERISA and Spinks was damaged thereby.

THIRD FEDERAL CAUSE OF ACTION VIOLATION OF FMLA

24. Spinks incorporates by reference as though fully set forth the allegations of paragraphs 1-17.

25. In engaging the conduct alleged in this complaint, FEDEX violated the provisions of the FMLA and Spinks was damaged thereby.

1 FOURTH STATE CAUSE OF ACTION
2 VIOLATION OF CALIFORNIA LABOR CODE

3 26. Spinks incorporates by reference as though fully set forth the allegations
4 of paragraphs 1-17.

5 27. In engaging the conduct alleged in this complaint, FEDEX maliciously and
6 fraudulently violated the provisions of the California Labor Code wage and hour laws and Spinks
7 was damaged thereby.
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9 FIFTH STATE CAUSE OF ACTION
10 WRONGFUL DISCHARGE

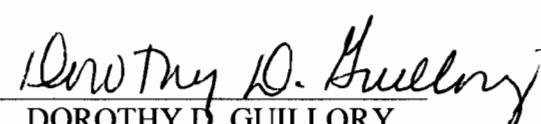
11 28. Spinks incorporates by reference as though fully set forth the allegations
12 of paragraphs 1-17.

13 29. In engaging the conduct alleged in this complaint, FEDEX wrongfully discharged
14 Spinks with malicious and fraudulent intent, and Spinks was damaged thereby.

15 Wherefore, Spinks prays for:
16

- 17 1. Compensatory damages according to proof;
18 2. Statutory damages;
19 3. Punitive damages according to proof;
20 4. Statutory Attorney Fees and Costs;
21 5. Such other relief as the Court deems proper.

22 Dated: May 8, 2008

23 
DOROTHY D. GUILLORY
Attorney for Plaintiff Johnathan Spinks